IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.10205 OF 2004

Praveen Kumar Choudhari
@ Sarojbhai Choudhari & ors. .. Petitioners

Vs

Sharad Kumar Manji Sejpal, .. Respondent

Mr P.R.Arjunwadkar, for the petitioners.

CORAM : D.B.BHOSALE,J.

DATE : 23rd December, 2004.

PC:

1. Heard the learned counsel for the petitioner.

2. This petition is directed against the judgment and order dated 20.10.2004 by which the petitioners' application seeking unconditional leave to defend the suit has been rejected. Leave to defend has been granted subject to deposit 50 per cent of the principal claim amount within two months from the date of the impugned order. It appears that some cheques were issued and the signatures on those cheques were of the petitioners, has not been disputed. in question have not been disputed. Mr Arjunwadkar, learned counsel for the petitioners, submitted that the three cheques out of five were not within limitation and hence the order directing the petitioners to deposit 50 percent of the

principal amount of those cheques is liable to be set

aside. I perused the impugned order wherein the learned Judge, after considering the pleadings and material placed on record, has prima facie, held that the suit is within limitation. I do not wish to enter into a controversy whether the petitioners-defendants had acknowledged the payments as stated in paragraph 12 of the plaint. In my opinion, this is not a fit case to exercise writ jurisdiction under Article 227 of the Constitution of India. It is open for the petitioners to lead evidence and establish that the claim in the suit in respect of the three cheques is not within limitation. The writ petition, therefore, fails and is dismissed as such.

3. At the request of Mr Arjunwadkar, learned counsel for the petitioners, time to deposit the amount as per the impugned order stands extended for a period of two months from today.

. Parties to act on an authenticated copy of this order.

(D.B.BHOSALE, J.)